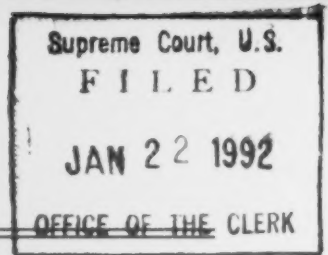


91-1072



No. _____

In the
Supreme Court of the United States
October Term, 1991

STATE OF UTAH

Petitioner,

v.

CARLOS REINALDO SAMPSON

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS FOR
THE STATE OF UTAH**

**BRIEF OF AMICUS CURIAE IN SUPPORT OF
PETITIONER**

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QUESTIONS PRESENTED

1. What effect should the administration of a polygraph examination have on the issue of custody for *Miranda* purposes?

2. What effect should be given an ambiguous reference to counsel in response to *Miranda* warnings given to a person not in custody?

3. What effect should be given to an ambiguous reference to counsel in response to *Miranda* warnings generally?

4. Should derivative physical evidence obtained from an alleged violation of *Miranda* be admissible?

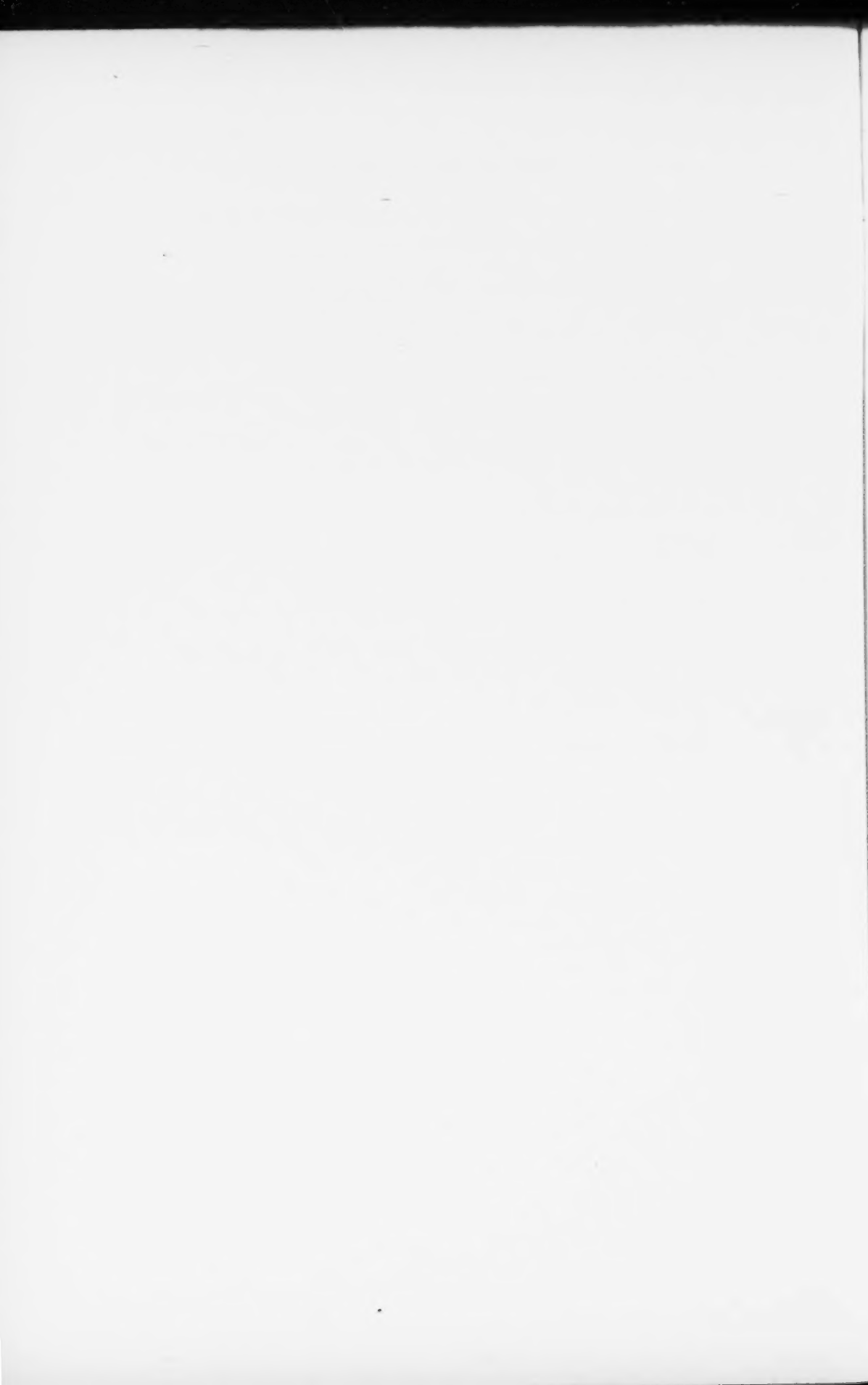
This amicus brief addresses questions 2 and 3.

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INTEREST OF AMICUS CURIAE

The States joined herein as amicus curiae urge this Court to grant certiorari and quash the decision of the Court of Appeals for the State of Utah. The state court reversed Respondent Sampson's murder conviction on a finding that police violated his *Miranda* rights when they failed to clarify his equivocal reference to counsel.

This case, as well as numerous other state and federal court decisions, show the need for this Court to examine whether the rigid procedural requirements which have developed from the 25-year-old *Miranda* decision continue to provide a viable means for determining the admissibility of confessions, to the exclusion of all other factors relevant to voluntariness under a due process analysis, or whether, under the special circumstances presented in this case, *Miranda*'s auxiliary provisions might better be incorporated as one of a number of nondeterminative factors in a totality of circumstances test.

ARGUMENT

In the decision at bar, the Utah Court of Appeals reversed respondent's criminal homicide conviction on the ground that incriminating statements were obtained in violation of his *Miranda*¹ right to counsel. The court held that respondent's statement, "Well, uh, should I have a lawyer, I mean, well, I'm really not worried about anything, it is just that...." was an equivocal reference to counsel which police failed to clarify. Because of the failure to clarify the reference, the court held that respondent's confessions, and physical evidence obtained as a result of the confessions, were required to be excluded.

The states joined herein believe that this case presents a compelling opportunity for this court to review the continuing scope and viability of its *Miranda* decision, and to evaluate whether, when good faith police efforts to comply with *Miranda* procedures result in a technical violation of the rules, or a failure to fully adhere to the dictates of *Miranda*, the admissibility of confessions should be determined under a more flexible totality of circumstances test, rather than rigid adherence to *Miranda* procedures.

This court devised the prophylactic *Miranda* rules to combat the compelling pressures of in custody interrogation and to permit a full opportunity for a defendant to exercise the Fifth Amendment privilege against self-incrimination. The decision was issued prior to the widespread recognition by police or prosecutors that prophylactic warnings would not necessarily eliminate confessions and that such warnings, and waivers, were valuable evidence of voluntariness. While the court sought to protect the privilege against compulsory self-incrimination, its ultimate concern was to prohibit the admission of statements which were the product of police overreaching. See *Colorado v. Connelly*, 479

1 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966).

U.S. 157,170, 107 S.Ct. 515, 93 L.Ed. 2d 473,486 (1986) ("The sole concern of the Fifth Amendment, on which *Miranda* was based, is governmental coercion."). In devising the procedures for apprising defendants of their Fifth Amendment rights and securing valid waivers of those rights, the court sought to educate police and prosecutors as to the constitutional boundaries for obtaining statements from defendants, to simplify judicial determinations as to the admissibility of custodial statements, and to provide each citizen with a shorthand accounting of his federal constitutional rights during custodial interrogations. The court has repeatedly recognized that *Miranda's* prophylactic rules are not themselves constitutionally mandated, but are only measures to protect the right against compulsory self-incrimination. See *Michigan v. Tucker*, 417 U.S. 433,444, 94 S.Ct. 2357, 41 L.Ed. 2d 182, 192.

Prior to *Miranda*, the principal concern in the context of compelled disclosures was simply whether such statements were voluntary under a totality of circumstances test. The court in state cases applied a due process test which examined the circumstances of interrogation to determine whether the processes were so unfair or unreasonable as to render subsequent confessions involuntary, and in federal cases referenced both the privilege against compulsory self-incrimination, *Bram v. United States*, 168 U.S. 532, 18 S.Ct. 183, 42 L.Ed. 568 (1897), and due process concerns. *Haynes v. Washington*, 373 U.S. 503, 83 S.Ct. 1336, 10 L.Ed. 2d 513 (1963).

No evidence of police overreaching was present in this case. Yet, respondent's equivocal reference to counsel, deemed insufficiently clarified by his immediately subsequent statement, "I'm willing to get it over with," and his written waiver of his *Miranda* rights, resulted in exclusion not only of his first confession, but also of derivative physical evidence, and a second confession given after subsequent

Miranda warnings. Unjustifiably, this result illogically elevates *Miranda*'s procedural safeguards above the constitutional protections afforded by the Fifth Amendment. This court moreover has never stated same. As aptly demonstrated by the Utah state court's almost impossibly complex analysis of the myriad *Miranda* issues presented by this case, the expanded *Miranda* test, as applied under the circumstances here, is more complex than the due process voluntariness test and may well produce an answer inconsistent with the constitutional test of voluntariness. In other words, the test as applied here does not serve simplicity, certainty, accuracy, or efficiency.

Two recent Florida cases vividly illustrate this point.

In *Owen v. State*, 560 So.2d 207 (Fla. 1990), *cert. denied*, ___ U.S. ___, 111 S.Ct. 152, 112 L.Ed. 2d 118 (1990), the Florida Supreme Court rejected Owen's claims of police coercion after viewing videotapes of his confessions which conclusively demonstrated that he was repeatedly advised of and understood his *Miranda* rights, was provided food and refreshments and was not subjected to individually lengthy interrogation sessions. There was, in short, a complete absence of state coercion. Yet, the court reversed Owen's convictions for murder, sexual battery and burglary because police failed to clarify his response to an inquiry about an insignificant detail,² "I'd rather not talk about it." While finding no violation of Owen's Fifth Amendment rights, the court nevertheless concluded that the failure of police to clarify an equivocal reference to Owen's *Miranda* right to terminate questioning required exclusion of his confessions.

In *Towne v. Dugger*, 899 F. 2d 1104 (11th Cir. 1990), *cert. denied*, ___ U.S. ___, 111 S.Ct. 536, 112 L. Ed. 2d 546 (1990),

2 Police asked Owen where he had left his bicycle. *Owen*, 560 So.2d at 215.

the Eleventh Circuit Court of Appeals in a habeas proceeding rejected Towne's claim that his confessions were involuntarily obtained, but held they were required to be excluded under *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed. 2d 378 (1981) because police did not clarify Towne's statement, "what do you think about whether I should get a lawyer." This miscarriage of justice occurred in a federal habeas proceeding years after the *Miranda* claim had been rejected by state courts and a federal district court.

This court has distinguished between mere technical departures from *Miranda* rules, and conduct which constitutes violations of the Fifth Amendment itself. See *Duckworth v. Eagan*, 492 U.S. 195, 109 S.Ct. 2875, 106 L.Ed. 2d 166 (1989); *New York v. Quarles*, 467 U.S. 649, 104 S.Ct. 2626, 81 L.Ed. 2d 550, (1984); *Michigan v. Tucker*, 417 U.S. 433, 94 S.Ct. 2357, 41 L.Ed. 2d 182 (1974). Justice O'Connor in her concurring opinion in *Duckworth v. Eagan* noted that the *Miranda* rule, like all prophylactic rules, "overprotects" the Fifth Amendment "[i]n the name of efficient judicial administration of the Fifth Amendment guarantee and the need to create institutional respect for Fifth Amendment values." *Id.*, 492 U.S. at ___, 106 L.Ed. 2d at 181.

However, *Miranda*'s value as an efficient means to simplify and clarify voluntariness determinations, as well as to create institutional respect for Fifth Amendment rights, is utterly lost in cases such as *Towne*, *Owen*, and the case *sub judice*. Despite police good faith advisements and unchallenged waivers of *Miranda* rights, the inadvertent failure of police to clarify ambiguous references to the right to remain silent or to counsel has been elevated above the constitutional rights sought to be protected. *Miranda* procedures must be subservient to the constitutional rights they serve, rather than elevated above these rights. The application of *Miranda* rules in this case, in *Owen* and in *Towne* resulted in esoteric legal analyses far more complex

and less clarifying than the due process totality of circumstances test which preceded *Miranda*, and totally remote from the ultimate issue of coercion with which both *Miranda* and the due process test are concerned. When technical violations or oversights of *Miranda* occur in the presence of otherwise good faith police efforts to comply with *Miranda* procedures, the admissibility of confessions should turn on their voluntariness, not whether a breach in procedure occurred.

The states joined herein do not propose a retreat from the requirement that *Miranda* warnings be given, and valid waivers of *Miranda* rights be secured prior to the obtaining of custodial statements. Even if this court were to recede entirely from *Miranda*, police would be well-advised to continue such practices in order to develop evidence of voluntariness in the manner originally intended by *Miranda*. What is being suggested is that *Miranda* no longer be the point from which no one may return. This court has certainly not disallowed, for example, a harmless error analysis in *Miranda* cases or in coerced confession cases. *Arizona v. Fulminante*, ___U.S. ___, 111 S.Ct. 1246, 113 L.Ed. 2d 302 (1991).

In light of the above, the states joined herein as amicus urge this Court to grant certiorari so that the scope of *Miranda* may be reexamined under the circumstances presented in this case.

CONCLUSION

The States joined herein as amicus curiae urge this Honorable Court to grant the petition for writ of certiorari filed on behalf of the State of Utah.

Respectfully submitted,

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APPENDIX

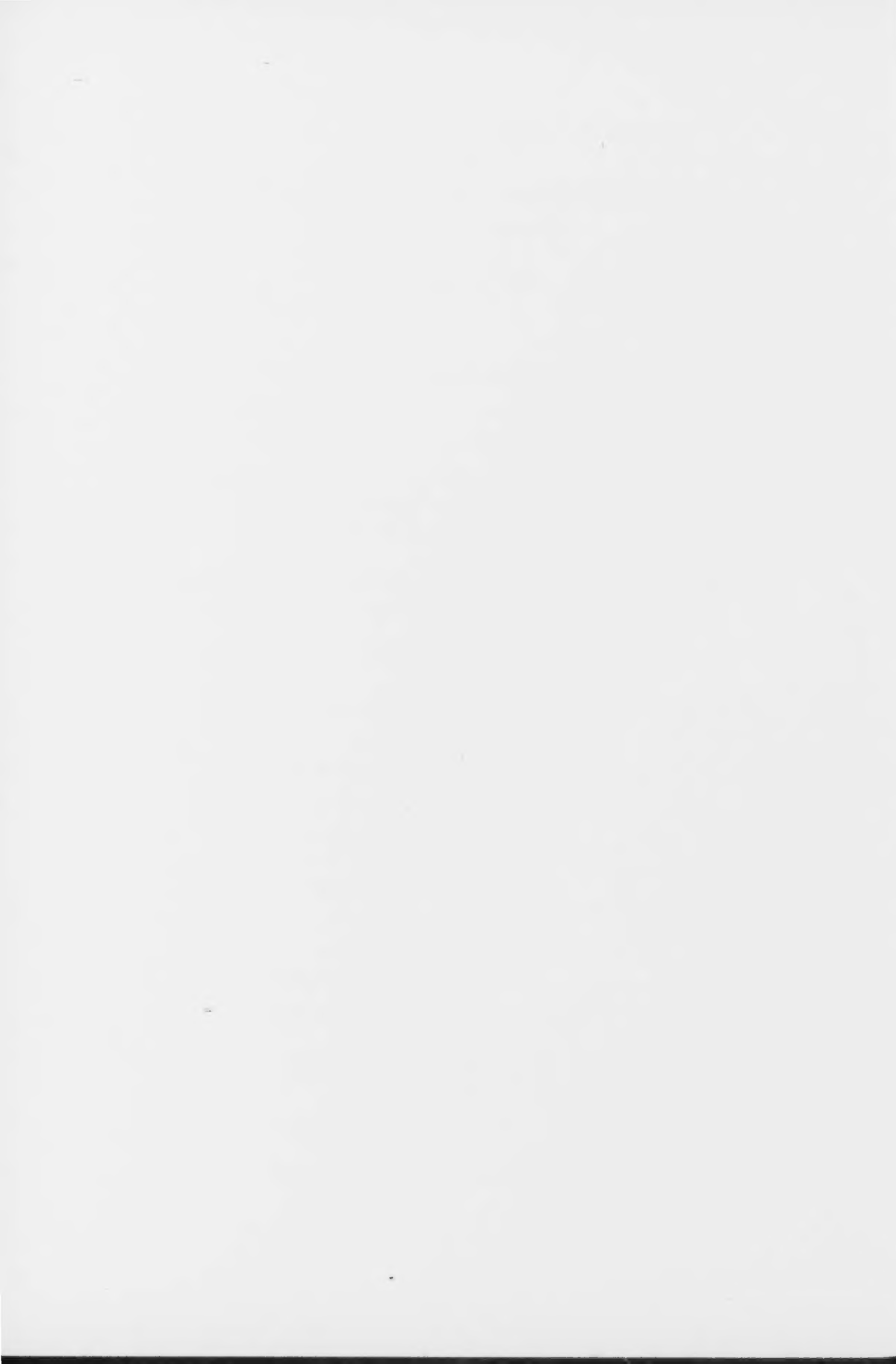
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